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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,319	11/27/2000	Dale B. Schenk	15270J-004743US	6653

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EXAMINER	
BALLARD, KIMBERLY	
ART UNIT	**PAPER NUMBER**
1649	

MAIL DATE	DELIVERY MODE
10/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/724,319	**Applicant(s)** SCHENK, DALE B.	
	Examiner Kimberly Ballard	**Art Unit** 1649	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *6* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *13 October 2009*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *56-58,61,63-66,71-79,81,85,86,92-94,97,99,164-191,194-205 and 208-217*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Elizabeth C. Kemmerer/
Elizabeth C. Kemmerer, Ph.D.
Primary Examiner, Art Unit 1646

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claims 214 and 215 under 35 USC 112, 2nd paragraph has been overcome by Applicant's amendments to the claims.

Continuation of 11. does NOT place the application in condition for allowance because: The remarks, arguments and evidence submitted 10/08/2009 have been fully considered but they are not persuasive. The request for withdrawal of finality of the previous office action, in particular regarding claims 85 and 204, is denied. The addition of new claims 210-217 in the previous amendment necessitated a new grounds of rejection under 35 USC 103. Because claims 85 and 204 depend from and otherwise include all of the limitations of rejected base claims 56 and 183, it would have been erroneous to not incorporate these claims as part of the newly-necessitated 103. The additional reference necessary to establish obviousness of claims 85 and 204 was added in further view of the main 103 rejection, and thus is considered a part of the rejection that was necessitated by amendment to the claims.

Applicant's arguments regarding provisional obviousness-type double patenting rejections and the rejection under 35 USC 103 (Anderson in view of Becker and Schenk) have been previously addressed, and the rejections are maintained for reasons previously made of record.

Regarding the rejection under 35 USC 103 (Findeis in view of Solomon and Becker), it is Applicant's position that the art at the time of filing as a whole would teach away from the residues of Abeta17-20 or 21 as a key region to focus therapeutic treatments, and cites several prior art publications for support. Applicant's arguments have been fully considered but are not not persuasive. All of the prior art cited by Applicant effectively boils down to the fact that there are basically 3 regions of the Abeta peptide that were of interest in the prior art for inhibiting aggregation of Abeta: an N-terminal region, a middle region (comprising at least residues 13-28, or more specifically 17-20), and a C-terminal region. The US Patent to Findeis provides strong evidence and motivation to select for agents that bind to Abeta17-20 and inhibit its aggregation. Solomon and Becker both reiterate this idea, collectively teaching the use of anti-aggregating antibodies for therapy. Therefore, as stated previously, it would have been obvious to use an antibody that binds to Abeta17-20 for therapeutic purposes, such as for the treatment of Alzheimer's disease. Accordingly, the rejection is maintained for reasons of record.